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SALES—CORPORATE STOCK—IMPLIED WARRANTIES—DE FACTO CORPORATION.—Bill in chancery to set aside a sale of 7,000 shares of the capital stock of a certain mining corporation, and to enjoin the defendants from converting to their own use a sum of money paid as part of the purchase price, and to enjoin them from transferring a number of promissory notes given for the balance of the purchase price, and further that they be required to surrender the notes for cancellation. The contentions of the plaintiff were that the mining company was not legally created and that the stock, of which that purchased by plaintiff formed a part, was illegally issued. *Held*, that where a person buys stock of a de facto corporation, no warranty being made that it is a de jure corporation, he cannot avoid payment by showing that the corporation was not legally organized and that the stock was illegally issued, since the only warranty implied is that the stock is genuine and that the vendor is the owner and authorized to transfer title. *Burwash v. Ballow et al.* (1907), — Ill. —, 82 N. E. Rep. 355.

Following are the expressions of some of the courts in regard to the warranties implied in the sale of stocks of corporations. The vendor of corporate stock does not impliedly warrant that the stock was issued by a de jure corporation. *Marshall v. Keach*, 227 Ill. 35; 81 N. E. 29. A vendor of stock in a corporation impliedly warrants that the same is genuine, and that he is the owner thereof and authorized to transfer title; and it was said that if the vendee desires further protection, he must exact a special guaranty. *Higgins v. Illinois Trust and Savings Bank et al.*, 193 Ill. 394. The vendor of a share of stock impliedly warrants that the same is issued by the duly constituted officers of the company and is sealed with the genuine seal of the corporation; but he does not warrant that such share has not been fraudulently issued by the officers in excess of its charter limit. *People's Bank v. Kurtz*, 99 Pa. St. 344. There is no implied warranty that the stock is of a de jure corporation. *Harter v. Elseroth*, 111 Ind. 159; 12 N. E. Rep. 129. A vendor of bank stock warrants the title, but not its quality or value. *Allen v. Pegram*, 16 Ia. 163. In *Meyer v. Richards*, 163 U. S. 385, a principle is enunciated which, while not involving the sale of corporate stock, nevertheless seems quite appropriate and might well have been applied in the principal case. Certain bonds had been issued by the state of Louisiana for a valid purpose. Part of the bonds so issued were valid and part invalid. The plaintiff bought a number of the invalid bonds and, on discovering the fact, sued his vendor to recover the purchase money. The court allowed him to recover. The court said: "The admission being that both parties contemplated the delivery of valid obligations, bonds of that character being outstanding, * * * such purpose was not fulfilled by the delivery of a mere equity which one of the parties, the seller, claims was existing in his behalf. Valid bonds and not the mere claim by the seller to enforce invalid bonds was the object of the contract."

SALES—ENTIRE AND DIVISIBLE CONTRACTS.—Defendant contracted to sell lumber to plaintiff to be subject to inspection by a third person. The lumber was shipped and the greater part was rejected on inspection. The

plaintiff, however, used the part which passed inspection. He sued to recover the damages incurred by reason of his having to buy lumber from others at advanced prices. The defendant insisted that the contract was entire and that plaintiff if he rejected part must reject all; and that, as he had used a part, he must be deemed to have accepted the whole. *Held*, that the contract was divisible and that plaintiff might recover the damages claimed. *Canton Lumber Company of Baltimore City v. Liller* (1908), — Ct. App. Md. —, 68 Atl. Rep. 500.

The rule is that in case of an entire contract a vendee, if he sees fit to reject, must reject in toto and put the seller in statu quo. *Rubin v. Sturtevant*, 51 U. S. App. 286; *Morse v. Brackett*, 98 Mass. 205; *Mansfield v. Trigg*, 113 Mass. 350; *Cohen v. Platt*, 69 N. Y. 348. But if the contract is severable, he may reject or accept different parcels, according to their conformity to the contract of sale. *Potsdamer et al. v. Kruse et al.*, 57 Minn. 193. And, even if the contract is one which would ordinarily be deemed entire, yet the parties may, by their conduct, so treat it as to show that they regarded it as severable in fact. *Russell and Company v. Lilienthal*, 36 Ore. 105; *Mansfield v. Trigg*, supra. The court in arriving at its decision in the principal case determined that the facts placed it within the last rule, saying that the fact that defendant removed the rejected lumber was sufficient evidence that it consented to the severance of the contract, in the absence of any evidence evincing a contrary intention. See *Holmes v. Gregg*, 66 N. H. 621; 28 Atl. Rep. 17; and *McCeney v. Duvall*, 21 Md. 166; both cases being directly in point with the principal case.

STREET RAILROADS—INJURY TO PEDESTRIAN—BURDEN OF PROOF.—Plaintiff, being about to cross a street, looked for cars on defendant's tracks and saw none; after waiting for a wagon to pass she stepped upon the track, where she was struck and injured by a street-car. *Held*, when plaintiff has shown the injury and that it was caused by defendant's car, all allegations of negligence stand proved until rebutted by proof in behalf of defendant. *Augusta Ry. and Electric Co. v. Arthur* (1908), — Ct. App. Ga. —, 60 S. E. Rep. 213.

The general rule, supported by innumerable decisions, is that negligence is not presumed from the mere fact of injury, but must be established by the evidence. AM. ENG. ENC. LAW TRT. NEGLIGENCE, p. 510; *Garvick v. United Rys. Co.*, 101 Md. 244. Under the doctrine *res ipsa loquitur* the manner of the occurrence of or the circumstances attending an injury may create a presumption of negligence, but negligence is not presumed from the injury alone, which must be naturally referable to some cause incident to the condition or operation of the railroad. *Thomas v. Philadelphia & Reading R. R. Co.*, 148 Pa. St. 180, 23 Atl. 989, 15 L. R. A. 416; *Chicago City Ry. Co. v. Rood*, 163 Ill. 477, 45 N. E. 238. As a modification of this doctrine, where injuries occur in the conduct of operations which common experience has shown can be carried on safely with the exercise of reasonable judgment, vigilance and care, the mere happening of an injury will be regarded as sufficient to warrant the submission of the question of negligence to the jury. *Jensen v. Thomas*, 81 Fed. Rep. 578; *Shafer v. Lacock*, 168 Pa. St. 497;